IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4743 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NASIRKHAN NAZIRKHAN SIPAI PATHAN

Versus

COMMISSIONER OF POLICE FOR THE CITY OF AHMEDABAD

Appearance:

1. Special Civil Application No. 4743 of 2002

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR HH PATEL Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 18/06/2002

ORAL JUDGEMENT

Heard Mr. Kamen N Shukla learned counsel for the petitioner and Mr. HH Patel learned AGP for respondents.

The petitioner has challenged the order of

detention dated 15.1.2002, Annexure-A, whereby the petitioner has been detained under PASA by the Police Commissioner of City of Ahmedabad.

Learned counsel has taken me through the number of grounds taken by the petitioner challenging the legality and validity of the order of detention and the relevant case law. The first point which has been focused by the learned counsel is of parity and it has been pointed out specifically that because of the alleged two criminal offences registered against the present petitioner, he has been detained under an apprehension that he would indulge in the similar type of activity and affect adversely to the public order. In this two very offences, one Kasim Buniadali Shaikh was also found involved and arrested with the present petitioner. Both of them charge-sheeted in both these offences and they are facing trial. This Kasim Shaikh was also detained on the very day i.e. 15.1.2002 by the Police Commissioner on the similar grounds mentioned and the reasons of subjective satisfaction recorded by the Police Commissioner.

The writ petition filed by Kasim Shaikh being SCA No. 2192 of 2002 has been heard and decided on merits by this Court on 2.5.2002 and this COurt has held the order of detention against Kasim Shaikh as bad in law. The Court observed that the detention is illegal and therefore, the same cannot be sustained. This Court while passing the order allowing the petition on 2.5.2002 has focussed on two relevant points and one of the point is that the petitioner was in judicial custody when the order of detention was passed. The other point is that there was no sufficient material with the detaining authority to arrive at a conclusion that the activity of the detenu can affect the public order and he has been wrongly branded as dangerous person by the detaining authority. I would like to reproduce the observations and the finding recorded by this Court (Coram: R.P. Dholakia, J.) in para-2 of the said judgment, which reads as under.

Para-2 "It is a settled principle oflaw that in order to bring a person within the expression 'dangerous person' as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter

> XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression 'public order'. A distinction has to be drawn between the 'law and order' and 'maintenance of public order'. A reference may be made of M.J. Shaikh vs. M.M. Mehta, Commissioner of Police & Ors., reported in 1995(2) GLR 1268."

So, without going into the merits of the other points, on the ground of parity, this Court is inclined to allow this petition.

In the result, this petition is allowed. The impugned order of detention dated 15.1.2002 is quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. DS Permitted.

(C.K. BUCH,J.)
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